FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 761 OF 2005 .

Sahibi Alam Mustaq. ..Applicant.
vs.
The State of Maharashtra. ..Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders. : Court's or Judge's orders :

Shri Chaitanya K. Pendse for the applicant.
Shri A.S. Shitole,A.P.P. for the State.
Shri Vidyadhar Vaidya for respondent No.2.

CORAM: V.M.KANADE,J.
DATED: 22-2-2005.

P.C.:

1. Heard learned Counsel appearing for the applicant, learned A.P.P. for the State and learned Counsel for respondent No.2.

2. This is an application for quashing the complaint which was numbered as 153/P/2003 which is now re-numbered as 1154/P/2005. This application is filed for quashing the said complaint. An application was filed in the trial Court on behalf of the applicant and the original complainant under section 320 of the Criminal Procedure Code for compounding the case with permission of

the Court. The said application was however rejected on the ground that offences under sections 457 and 381 are not compoundable offences. In the present application, the respondent No.2 has filed an affidavit in which he has stated that he has no objection if complaint is quashed as parties have settled their dispute out of Court. Both, the applicant and respondent No.2 are present in Court. Learned A.P.P submits that 2 other accused are absconding and that certain properties are still not recovered.

3. So far as powers of the High Court under section 482 of the Cri.P.C. are concerned, they are not limited or restricted by provisions of section 320 of the Cri.P.C. I am fortified in my view by the ratio of the judgment of the Apex Court in the case of **B.S. Joshi and ors. vs. State of Haryana and anr. reported in JT 2003(3) SC 27** wherein the Apex Court in para 15 has observed as follows:

> "In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the

Code."

4. In the present case, the objection raised by the learned A.P.P. cannot be accepted for the simple reason that the complainant has no objection and parties have settled their dispute out of Court. In view of the affidavit filed by respondent No.2, the complaint pending in the Court of Metropolitan Magistrate, 5th Court, Bhoiwada, being Criminal Case No. 1154/P/2005 under section 457 and 380 of the I.P.C. is quashed and set aside. Application is allowed in the above terms. Affidavit filed by respondent No.2 is taken on record.

5. Parties to act on authenticated copy of this order.